IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1002 OF 2005

IN

EXECUTION APPLICATION NO.183 OF 2004

IN

SUMMARY SUIT NO.1510 OF 2002

M/s.G.M.Breweries Ltd. ...Plaintiffs

Versus

M/s.Siddhivinayak Builders & Ors. ...Defendants

And

Samir B.Desai ...Intervenor/Obstruc./ Respondent

.....

Ms.Sumedha Rao for Applicant/Intervenor.

Mr.O.A.Das for Plaintiffs.

Mr.G.T.Mestha, Commissioner for Taking Accounts is present.

.....

CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 20, 2005.

P.C.

1. This Chamber Summons is taken out by Samir

B.Desai, third party, claiming to be the owner in respect of Flat No.B-103 in building known as Venus situated at Chikoowadi, Boriwali (West), Mumbai - 400 092.

2. Along with the Chamber Summons, affidavit has been filed which asserts that the Applicant has purchased the said flat in the building which is subject matter of attachment, by registered Agreement for Sale dated 1st February 2002. The Applicant has paid the consideration under the said Agreement from time to time. According to the Applicant, possession of the said flat has been given to him and he is presently in occupation of the said flat. Whereas, warrant of attachment of the entire building came to be passed on 7th July 2004. On this basis, it is submitted that no attachment can be levied in respect of flat which has been purchased by the Applicant for consideration, much prior to the attachment. That attachment may continue with regard to the remaining building.

3. This Chamber Summons is, however, resisted

by the Counsel for the Judgment Creditors. According to them, there is unexplained delay in taking out the Chamber Summons. besides, the documents produced on record are not sufficient to establish the case of the Applicant that he is in possession of the premises in question.

4. Having considered the pleadings and the rival submissions and after going through the record, I have no hesitation in allowing the Chamber Summons to the limited extent of raising of attachment in respect of flat No.B-103 in Venus Building, which is in possession of the Applicant and has been purchased for consideration under registered Agreement for Sale dated 1st February 2000.

5. Insofar as the question of possession is concerned, the Judgment Creditors, in the affidavit filed in the companion Chamber Summons No.1358 of 2004 of S.Swaminathan, has clearly conceded of being satisfied that possession letter has been issued in respect of six parties named in Para 5 of the said affidavit. The Applicant is named at

Serial No.3. Against the name of the Applicant, Flat No.103-B is also mentioned. In other words, the Judgment Creditors concedes that possession receipt has been issued in favour of the Applicant in respect of the said flat. If it is so, the Applicant ought to succeed to the limited extent as referred to above.

6. The argument of the Judgment Creditors that no explanation has been offered by the Applicant for the delay in taking out the present application is concerned, I find no substance in the said submission. Indeed, warrant of attachment has been issued on 7th July 2004, however, Shri Kamalkumar approached this Court in the first instance by way of Chamber Summons No.1358 of 2004 in representative capacity on behalf of all the occupants in the building for raising of the attachment. That Chamber Summons was disposed of on the objection taken by the Judgment Creditors with liberty to the respective occupants to take out separate Applications, if so advised. In that sense, the delay in taking out the present Chamber Summons on 9th August 2005, cannot be said to be

intentional or designed one.

7. If it is so, the objection cannot be the basis to non-suit the Applicant, who otherwise has substantiated his rights in Flat No.B-103 of the Venus Building.

8. Accordingly, Chamber Summons made absolute only to the extent of Flat No.B-103 in Venus Building. No order as to costs.

A.M.KHANWILKAR, J.